

**REMARKS**

This Amendment is in response to the Official Action mailed November 28, 2006. Claims 1, 6, 15, and 17 have been amended. Claims 8-12 and 18 have been canceled. Claim 20 is new. Therefore, claims 1-7, 13-17, 19 and 20 remain currently pending in the present application. The following sets forth Applicants' remarks regarding the outstanding Action and the currently pending claims.

In the Official Action, the Examiner rejected originally presented claims 1-4, 13-15, 17, and 18 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,458,641 to Ramirez Jimenez ("Ramirez Jimenez"), claims 5-12 and 19 under 35 U.S.C. §103(a) as being unpatentable over Ramirez Jimenez in view of U.S. Patent No. 4,997,432 to Keller ("Keller"), and claim 16 under 35 U.S.C. §103(a) as being unpatentable over Ramirez Jimenez in view of U.S. Patent No. 4,105,407 to Sanderson ("Sanderson"). In short, it is the Examiner's position that each and every one of the elements of claims 1-4, 13-15, 17, and 18 are taught by Ramirez Jimenez, while certain elements of claims 5-12, 16, and 19 are not specifically taught by that reference. However, with regard to the these latter claims, the Examiner has cited Keller and Sanderson as teaching the elements not disclosed as Ramirez Jimenez and noted that such elements are merely obvious additions to the invention of Ramirez Jimenez.

Applicants strongly disagree with the Examiner's assertions regarding Ramirez Jimenez. Such reference teaches a vertebral body prosthesis including cephalic and caudal components with a separating setscrew therebetween. There is no teaching in Ramirez Jimenez relating to an insertion plate for use in inserting an intervertebral disc replacement device having at least first and second members. Rather, the entire disclosure of Ramirez Jimenez is directed to the prosthesis as a

whole, with only mere mention of such being inserted between two vertebral bodies. In addition, the prosthesis part in Ramirez Jimenez is a fusion type device, which does not allow for any natural movement between adjacent vertebrae to be retained/restored after implantation. The present invention, on the other hand, is directed to such an articulating disc replacement, and more particularly, to the insertion of such a device into the human body. In fact, each of the currently pending claims is directed to an insertion plate for the use in inserting such an intervertebral replacement device. Thus, the disclosure of Ramirez Jimenez is far different from that set forth in the above amended claims.

Applicants note that certain of the currently pending claims have been amended above to more particularly claim that which is believed to be one of their inventions. Specifically, independent claims 1, 15, and 17 have all been amended to include certain additional limitations relating to the insertion plate or the use thereof. For example, with regard to independent claims 1 and 15, it is now required in such claims that the insertion plate include a stem extending away from an anteriorly directed surface of the base, which facilitates movement of the intervertebral disc replacement device and insertion thereof into the intervertebral disc space while the first and second members remain in a position without substantially changing their orientation with respect to one another. This stem is sized and shaped for engagement with an insertion handle to further facilitate movement of the intervertebral disc replacement device by a surgeon or other medical professional. One of the stem or the insertion handle includes a bore and the other of the stem or the insertion handle includes a tapered shaft that frictionally engages the bore to facilitate detachable engagement for the stem and the handle. In other words, independent claims 1 and 15 have more

particularly set forth the structure which allows a handle to be removably coupled to the insertion plate for use during the surgical procedure. In addition, independent method claim 17 has been amended to now include steps relating to the coupling of first and second members of an intervertebral replacement device to an insertion plate and the coupling of the insertion plate to a handle through the use of a similar tapered shaft and bore cooperation. Thus, as a whole, the currently pending claims more particularly capture one aspect of the present invention.

In addition to the amendments of independent claims 1, 15, and 17, minor amendments have been made to dependent claim 6, claims 8-12 and 18 have been canceled because similar limitations set forth in those claims have been incorporated into their respective independent claims, and new claim 20 has been added to recite one additional step to the method of independent claim 17. Applicants respectfully point out that the currently pending claims are neither anticipated nor obviated by any of the prior art cited by the Examiner. None of the references cited by the Examiner teach or suggest the configuration of the present device claimed. In light of the above, Applicants respectfully request allowance of each and every one of the currently pending claims. Although each of the dependent claims has not been discussed with specificity, Applicants submit that such claims are allowable based upon the fact that they depend from an allowable independent claim. A dependent claim is necessarily narrower than an independent claim from which it properly depends. Thus, Applicants respectfully request allowance of the present case.

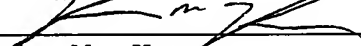
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: May 29, 2007

Respectfully submitted,

By   
Kevin M. Kocun  
Registration No.: 54,230  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
600 South Avenue West  
Westfield, New Jersey 07090  
(908) 654-5000  
*Attorney for Applicants*